

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210

9:00 a.m.
January 17, 2007

MINUTES

STAFF MEMBERS PRESENT:

Derek B. Miller, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education/Licensing Director
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Tiffeni Wall, Real Estate Education Coordinator
Dave Mecham, Investigator

COMMISSION MEMBERS PRESENT:

H. Blaine Walker, Chairman
Bonnie Peretti, Vice Chairman
Doyle "Sam" Sampson, Jr., Commissioner
Gary Hancock, Commissioner
Kay Ashton, Commissioner

GUESTS

Glenn Welker	Paul Naylor
Lance Miller	Mike Fowler
Chad Ahearn	Curtis Bullock
Kevin Swenson	

The January 17, 2007 meeting of the Utah Real Estate Commission began at 9:00 a.m. with Chairman Walker conducting.

Approval of Minutes

The minutes for December 20, 2006 were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Derek B. Miller

Director Miller said the Legislative session opened on Monday and the Division has a bill.

The bill will give the Division the authority to investigate and prosecute more aggressively unlicensed activity and also give the Commission authority to levy fines against those people in serious cases in the amount that is equal to the profit that they got from their fraud.

Director Miller announced Dee Johnson to be the new Enforcement Director. Mr.

Johnson has been the acting director since the retirement of Jon Brown, and has now been given the position officially.

Chair Walker mentioned there will be a budget hearing for the Division on January 24, 2007 at 2:00 p.m. held in the Workforce Service building in room W110. Director Miller said the Division has requested and been given approval from the Governor's office to receive two new positions to help with licensing. One will be for mortgage and the other for real estate licensing.

INVESTIGATIONS REPORT – Dee Johnson

Mr. Johnson reported in December the Division received 27 written complaints, screened 16 complaints (no cases were opened), opened 9 cases for investigation, closed 10 cases, leaving the number of open case files at 177. There were 2 licensing hearings, 1 stipulation/order was signed by the Commission, and 2 petitions or Cease & Desist Orders were issued.

The Continuing Education audits show there were 4 cases opened for investigation, 8 cases were closed, leaving the number of open files at 22.

Mr. Johnson said a realistic case load for an investigator is 30-40 cases. Currently, the Division investigators are handling 60-70 cases, with one investigator now working on 100 cases. Vice Chair Peretti asked Mr. Johnson how many cases were open between all three industries (mortgage, real estate and appraisers). Mr. Johnson said the combined number is approximately 400 cases.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren said the statistics keep growing. In January 2006 the number of active licensed sales agents was 12,460 and as of December 2006 the number is now 14,800. The two new licensing technicians the Division will be getting will help in keeping everything moving smoothly.

Ms. Wismer said there is a rule that has gone through the public comment period and is ready to be made effective if the Commission so decides. R162-9, Continuing Education, has several changes. The reasons for the changes are: 1) the providers of continuing education courses maintain that it is very difficult to submit an application for approval of a course 60 days in advance of the date that a course will be offered because sometimes the course outline has not been finalized that far in advance of the course offering. The Division of Real Estate has determined that it does not need 60 days to process applications for certification of continuing education courses and instructors, and that 30 days would be sufficient, and so is willing to change the deadline to accommodate the interests of the course providers; 2) outdated language that is no longer needed is deleted. Specific fee amounts are also deleted since fees are set in the Division's fee schedules and since fees tend to change over time; and 3) there will be an additional means of providing continuing education credit. In addition to issuing to the student a paper course completion certificate, the course provider will upload course completion data electronically to the Division of Real Estate database.

Chair Walker said a motion has been made for approval and enactment of the proposed rule. The motion was approved unanimously. Director Miller said the Division concurs with this motion.

Mr. Fagergren said it was recently called to his attention that Rule 162-4 describes that brokers or their assigned personnel attend all closings. It was explained that with the different terminology in the REPC they are not actually attending a closing, they are attending a settlement. With this suggestion in mind, Ms. Wismer has produced a rule change to R162-4, Office Procedures – Real Estate Principal Brokerage. The rule changes the wording to change “closings” to “settlements.” A comment from the public suggested clarifying the broker doesn’t have an obligation to look after the other side of the transaction and that’s it is the other brokers responsibility as well. There seems to be an overlap that makes it unclear. Chair Walker asked Ms. Wismer to add some wording stating that the principal broker or authorized representative is responsible for the content and accuracy of all settlement statements prepared for the signature of the party with whom he has agency relationship.

A motion was made on the proposed changes in the wording to R162-4.1.4.2. The motion was approved subject to the additions suggested by Ms. Wismer. There being no further discussion, the motion passed.

Ms. Wismer handed out a draft of R162-1-2, Definitions. The first section of this rule is the definition section and adds definitions for ARELLO Certification, Credit hour, DBA (doing business as), Distance Education, Provider, and Real Estate Sales Agent or Sales Agent. Discussion from the public asked about the definition of a Real Estate Sales Agent or Sales Agent. Director Miller said it specifically was written to cover both an independent contractor and/or a W-2 employee. Ms. Wismer said the definition is currently in the statute as someone who is affiliated with a licensed principal broker either as independent contractor or as an employee. Since the definition is already in the statute, it was agreed to remove the redundant definition in this rule. Another comment from the public asked about the definition of Distance Education and what was considered separation. Mr. Fagergren said it would be easier to see the definition when the definition of traditional classroom education is added in the next draft. Ms. Wismer said there will be another draft next month with the change requested.

Draft Rule 162-7-1, Filing a Complaint, would be changed to broaden the rule to not specifically respond to a Notice of Complaint. Director Miller said the statute allows the Division to send a “Notice” to licensees. Ms. Wismer pointed out there are times when the Division may not want to send out a Notice of Complaint because the Division does not always want to notify a licensee that they are under investigation, such as a case of fraud. The language changes would be changing Notice of Complaint to Notice “or” Complaint. After discussion, it was agreed to add “...in the manner specified in the notice” to the sentence “the licensee must respond in the manner specified in the Notice within ten business days after the receipt of the notice from the Division.” A motion was made to approve the modification, and was passed unanimously.

Mr. Fagergren said the draft of R162-8, Prelicensing Education, has a lot of changes, some are substantive and others are just rearranging. He described what the major changes would be to the rule. It was intended in R-162-1-2 would cover changes in definitions. This rule, R162-8, talks about requirements that all classes are required to adhere to these six paragraphs that specifically speak to teaching a class seeking distance education approval. The Division has looked at many other states and a lot of regulations and has tried to be specific in what will be required to be built in to a course to meet these requirements.

Another area being changed is Instructor Certification. The previous system has been around for many years that required a pre-licensing instructor, adjunct instructors, and guest lecturers. There was also an apprentice training program where someone would work from this guest lecturer to be an adjunct instructor who could only teach a limited part of the prelicensing. In interaction with schools and instructors there seems to be a lot of confusion on this topic. These changes would eliminate some of the confusion on the approach to becoming an instructor.

Mr. Fagergren is also suggesting the elimination of a section on pre-licensing instructors who are required to attend an IDW (Instructor Development Workshop), but they are supposed to attend an additional 12 hours of additional CE beyond the required 12 hours need to renew their license. The Division is recommending the number be reduced so the instructor doesn't have the burden beyond what the normal requirements would be. Director Miller said this draft is the companion piece to the definitions rule and the Division is not asking that a decision be given now, but just review the draft for the next meeting.

Ms. Wismer pointed out the changes are not as extensive as they look at first. Some of the changes are just moving the rules around to a place where it makes more sense. For example, by deleting the definition section from Rule 8, the remainder of the rule would have to be completely renumbered. Instead of doing that, existing sections were moved and some changes were made. Chair Walker asked the Commission to review the draft prior to the next meeting. Copies of the draft were also given to the public for any input or concerns to be given to either Chair Walker or Director Miller before next month. Mr. Fagergren said next month the Division will have the rule for continuing education.

Mr. Fagergren suggested that another area where the Division needs input from the Commission is about different options on the Core Course. There have been meetings where discussions and comments were given. Some of the comments expressed that the Division's Core Course was somewhat limiting and the industry was better in creating education. The current rule describes the Division creating a Core Course that now goes through the end of June. In preparation for replacement of that Core Course, the Division envisions the industry be given topics and be told to submit topics on subjects for consideration by the Division for approval of Core Course topics. Mr. Fagergren is asking for some topics to be given to the Division. The Division is

suggesting the following topics: state approved forms/contracts; ethics; agency; prevention of real estate and mortgage fraud; and changes to federal and state laws and Administrative Rules and Regulations. The Division is asking for discussion and acceptance of this list so they can begin to notify schools to prepare courses for submittal to the Division. The model from the mortgage industry is to have several approved topics by their Commission and the Division and those topics are used as core topics. This way it would keep topics current and flexible. Director Miller said the mortgage industry has a rule stating what the selected core topics are and this works well for the Division when someone calls to challenge adding other topics that have not been approved. The mortgage rule allows the Commission and Division to review topics to either add or delete from the current list. Commissioner Sampson asked on how many hours each course would be. In the mortgage industry they are allowed to mix and match hours by some courses being 2 hours and others 3 hours. Mr. Fagergren said the core certificates will designate whether the course has been approved as a "Core." A motion was made to approve the list submitted by the Division on core topics. The motion was approved.

LICENSE HEARING: CLOSED TO PUBLIC

10:30 Felix Fuentes – Application for License

OPEN TO PUBLIC

OTHER BUSINESS

Chair Walker suggested that when there are topics for discussion in the Education and Licensing report, that they be listed on the Agenda. He said Director Miller has contacted Blaine Ferguson to schedule a Commission Training class for next month.

EDUCATION/LICENSING REPORT (Continued) – Mark Fagergren

Mr. Fagergren brought up the new agent core course topics. Currently the Commission has approved 9 hours plus the Core Course to be completed within the first year of licensing. With the list that was just approved, Mr. Fagergren asked the Commission if they had suggestions on what topics might make up the 3 hours allotted for the Core Course. The current topics covered on the New Agent Course are: 2 hours of Agency, 2 hours of Ethics, 3 hours of Forms/Contracts; and 2 hours of Valuation. After some discussion, it was agreed to have the remaining 3 hours cover Federal/State and Administrative Rules and Regulations. The new agenda will require a rule change to update the previous 9 hours to 12 hours and be effective on July 1, 2007. Commissioner Ashton asked if the outline could contain covering RESPA Section 8 so agents early on can realize they can't take kickbacks and gifts from loan officers and title companies. The response was that it could be covered under the Federal Law part of the course.

As a point of clarification, Mr. Fagergren said that new agents that are licensed after July 1, 2007 will have to have taken the New Agent Course within their 2 year when they renew. Others can take this course as they desire and it could be used as the current licensees required 12 hours of continuing education.

Mr. Fagergren said the newsletter is at the printers and he hopes it will be out by the end of the month.

Commissioner Ashton asked if a continuing education approval course if it could be given credit for both a mortgage course and a real estate course. Mr. Fagergren said the applications on the website currently have a box on the top to check. It does cost more to have a course approved for both mortgage and real estate.

A motion was made to go into an Executive Session from 11:46 a.m. to 12:00 p.m.

RESULTS OF EXECUTIVE SESSION

Informal Hearing:

Felix Fuentes – Application was denied and he can not reapply for a minimum of 2 years.

A motion was made and accepted to adjourn the meeting at 12:03 p.m.